IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3623 of 1983

With

SPECIAL CIVIL APPLICATION No 3224 of 1987

And

SPECIAL CIVIL APPLICATION NO. 1844 of 1987.

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI

and

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

Special Civil Application No. 3623 of 1983:

REVABEN WIDOW OF CHIMANLAL GOPALDAS & Others.

Versus

STATE OF GUJARAT & Others.

Special Civil Application No. 3224 1987 :

Kamalaben Chhotubhai Sorathia & Others.

Versus
State of Gujarat & Others.

Special Civil Application No. 1844 of 1987 :

Surat Municipal Corporation
Versus
Kamalaben Chhotubhai Sorathia & Others.

Appearance:
1. Special Civil Application No. 3623 of 1983
MS KJ BRAHMBHATT for Petitioners No. 1-3,5-8
MS VASUBEN P SHAH for Petitioners No. 1,4-8
Ms. Manisha Lavkumar AGP for Respondent No. 1
Mr. Mrugan Purohit with MR PRASHANT G DESAI
for Respondent No. 2
NOTICE SERVED for Respondent No. 2
RULE SERVED for Respondent No. 3

2. Special Civil Application No. 3224 of 1987
DELETED for Petitioner No. 1
Ms. Manisha Lavkumar, AGP for Respondent No. 1

3. Special Civil Application No. 1844 of 1987.
Mr. Mrugan Purohit with Mr. Prashant G. Desai
for petitioner.
Respondent No.1 deleted.
Ms. K.J. Brahmbhatt for respondents No. 4 & 5.
Respondents Nos. 2/1 to 2/5 served.

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE K.A.PUJ

Date of decision: 11/01/2002

CAV JUDGEMENT
(Per : MR.JUSTICE K.A.PUJ)

Since common point is involved in Special Civil Application Nos. 3623 of 1983 and 3224 of 1987 and since Special Civil Application No. 1844 of 1987 is a cross-petition arising out of the judgment and order of learned Assistant Judge, Surat, against which the petitioner in Special Civil Application No. 3224 of 1987 has also filed the petition before this Court, all the

three petitions are heard together and disposed of by this common judgment. The facts stated hereinafter are taken from the Special Civil Application No. 3623 of 1983.

2. Heard the learned advocates of the respective parties and perused the pleadings and the materials and evidence placed on record.

3. In Special Civil Application No. 3623 of 1983, the petitioners have sought for a declaration from this Court to the effect that provisions contained in Part III of Appendix I to the Bombay Provincial Municipal Corporations Act, 1949, (hereinafter referred to as "the Act") as unconstitutional and ultra vires. The petitioners have further prayed for quashing and setting aside the judgment and award of the learned Assistant Judge, District Court, Surat, respondent No.3 herein in so far as it pertains to solatium and further directing the Surat Municipal Corporation, the respondent No.2 herein to pay solatium amount as declared by the learned Civil Judge (SD) in Municipal Reference No. 2 of 1979. The facts giving rise to the present petition are briefly stated as under.

4. The petitioners were the owners of the property situate in Salabatpura known as "Maliniwadi" in Ward No.3 at Surat bearing Nos. 2885-D-1-A-9-10-11. The respondent Corporation had acquired 150 sq.yds. of land out of Nondh No. 2885-D-A-9; 260 sq.yds. out of Nondh No. 2885-D-A-10; and 300 sq.yds. out of Nondh No. 2885-D-A-11. Thus, in all 710 sq.yds. of land was acquired by the respondent-Corporation under Section 213 of the Act. The respondent Corporation had declared the award in connection with the acquisition of the said lands fixing the compensation to be awarded to the petitioners at the rate of Rs. 70/per.sq.yard.

5. The petitioners were not satisfied with the award passed by the respondent-Corporation as the said award according to the petitioners was quite inadequate, unjust and not having the criteria in accordance with the principles. The petitioners were also of the view that the compensation awarded by the respondent Corporation was not as per the market-price of the land and that the petitioners were not heard by the respondent Corporation before fixing the amount of compensation. The petitioners therefore made reference, being Municipal Reference No. 2 of 1979 before the learned Civil Judge (SD), Surat, who vide his award dated 24.4.1981 had fixed the compensation in the sum of Rs. 42,000/- with 15%

solatium thereon, with running interest at the rate of 6% p.a. from the date of taking of possession, i.e. 7.4.1976 till realisation with costs.

6. Being aggrieved by the aforesaid award and judgment, the respondent Corporation preferred an appeal being Regular Civil Appeal No. 171 of 1981 in the Court of learned Assistant Judge, Surat. The learned Assistant Judge, vide his order dated 5th January 1983, had confirmed the judgment and award of the learned Civil Judge (SD) on all other points, except the payment of solatium. The learned Assistant Judge, Surat, was of the view that the relevant provisions of the Act appear to be violative of the Article 14 of the Constitution of India, but as per the settled legal position of law, if the decree which may be passed or made in any appeal, in which question referred to has arisen, is subject to any further appeal or revision, no reference under Section 113, read with Order 46, Rule 1 of the Civil Procedure Code can be made. The decree which was passed in the appeal before the learned Assistant Judge, Surat, was subject to further appeal and/or revision and the claimants-respondents in the said appeal could also move this Court under Article 227 of the Constitution and in this view of the matter, the learned Assistant Judge, Surat has declined to refer the matter to this Court and held that the claimants-respondents were not entitled to solatium at the rate of 15% on the amount of compensation awarded by the learned Civil Judge (SD), Surat. However, the learned Assistant Judge, Surat, has confirmed the rest of the decree passed by the learned Civil Judge (SD), Surat.

7. Being aggrieved by the said order of the learned Assistant Judge, Surat, the present petition, Special Civil Application No. 3623 of 1983 is filed by the petitioners. While challenging the order, the petitioners have urged in the petition that impugned provisions contained in the Act are violative of the fundamental right of the petitioners under Article 14 of the Constitution of India. It was alternatively contended by the petitioners that the provisions contained in Part III of Appendix I to the Act read with Section 284-N of the Act are violative of the fundamental rights of the petitioners guaranteed under Article 14 of the Constitution of India, inasmuch as the owner of the property which is acquired compulsorily under the Act is not differently situated from the owner of the property whose property was acquired under the provisions of the Land Acquisition Act and that there being no nexus for classification between the two classes of owners, whose

properties are acquired for the similar purpose under the two different Acts, both of them would require the same treatment and that the provisions contained in the Local Act depriving the owner of the land from the payment of solatium would be discriminatory and violative of the fundamental rights of the petitioners guaranteed under Article 14 of the Constitution of India. It was further contended by the petitioners that the purpose of acquisition either under the Act or under the Land Acquisition Act being similar and that the different nature of acquisition under different Acts, does not furnish a rational ground to pay more compensation to one owner and less compensation to another. The petitioners, therefore, submitted that the provisions contained in Part III of Appendix A gives discriminatory treatment to the petitioners whose lands are acquired under the Act and they are therefore violative of Article 14 of the Constitution of India.

8. The petitioners have alternatively submitted that the land of the petitioners were acquired under Section 213 of the Act and that the provisions contained in Part III of Appendix A would not apply to the present case and that the petitioners would therefore be entitled to solatium at the rate of 15%, in view of the provisions contained in the Act, read with the provisions contained in Section 23(2) of the Land Acquisition Act.

9. The respondent Corporation opposed the petition and in its affidavit-in-reply, it has been submitted that there is no question of different treatment being given to the person whose property is acquired compulsorily under the Act and from the owner of the property whose property is acquired under the provisions of the Land Acquisition Act. It was further submitted that the entire purpose of both the Acts is different and the provisions of both the Acts and objects are also different. Hence, there was no question of discriminatory treatment, merely because another Act makes provision for acquisition for limited purpose. It was also contended by the respondent Corporation that the acquisition under the Land Acquisition act cannot be equated with the provisions of the Act as under the Land Acquisition Act, the acquisition is even made for a public purpose apart from the provisions of the Act which are quite different for the purpose of acquisition. Under the provisions of the BPMC Act, the land is acquired at the time of constructing building since that part of the land with the super-structure is within the alignment of road and that all the owners of the properties within the City whose lands or property are

acquired because of alignment of road are equally acquired by the Corporation. It was also contended that there is no question of discriminatory treatment being given merely because provisions for solatium are not made under the Act. It was further submitted that the acquisition under the Land Acquisition Act and acquisition under the BPMC Act consequent upon the road alignment are entirely two different things and they are similarly situated and both the provisions are totally different and therefore there is no violation of Articles 14 of the Constitution of India. The respondent-Corporation has also opposed the plea taken by the petitioners that their case is governed by the provisions of Section 213 of the BPMC Act and they are entitled to solatium in view of the provisions contained in Section 23(2) of the Land Acquisition Act as the provisions contained in Part III of Appendix A to the BPMC Act would not apply to the present case.

10. Having regard to the above facts and the pleadings of the parties, the moot question to be decided by us is as to whether the provisions contained in Part III of Appendix I to the BPMC Act are unconstitutional and ultra vires by not making any express provision with regard to grant of solatium as in the case of land acquired under Land Acquisition Act which provides such provision under Section 23(2) of the said Act, any discriminatory treatment is given to the land owners whose lands are acquired under the BPMC Act. Miss. K.J. Brahmbhatt, learned Advocate appearing for the petitioners has drawn our attention to Chapter XIV of the BPMC Act which consists of Section 202 to Section 252. Section 213 of the Act deals with acquisition of open land or of land occupied by platforms within regular line of street, which reads as under:

"213. Acquisition of open land or of land occupies by platforms, etc. within regular line of street.

If any land not vesting in the Corporation, whether open or enclosed, lines within the regular line of a public street and is not occupied by a building, or if a platform, verandah, step, compound wall, hedge or fence or some other structure external to a building, abutting on a public street or a portion of a platform, verandah, step, compound wall, hedge or fence or other such structure, is within the regular line of such street, Commissioner may, after giving to the owner of the land or building

not less than seven clear days' written notice of his intention to do so, take possession on behalf of the Corporation of the said land with its enclosing wall, hedge or fence, if any, or of the said platform, verandah, step or other such structure as aforesaid or of the portion of the said platform, verandah, step or other such structure aforesaid, which is within the regular line of the street and, if necessary clear the same and the land so acquired, shall thenceforward be deemed a part of the public street :

Provided that when the land or building is vested in the [Government] possession shall not be taken as aforesaid, without the previous sanction of the Government concerned and, when the land or building is vested in any Corporation constituted by any law for the time being in force, possession shall not be taken as aforesaid, without the previous sanction of the [State] Government."

Section 216 of the BPMC Act deals with compensation to be paid and betterment charges to be levied. Sub-section (1) of Section 16 reads as under;

216. Compensation to be paid and betterment charges to be levied.

(1) Compensation shall be paid by the Commissioner to the owner of any building or land required for a public street under Section 211, 212, 213 or 214 for any loss which such owner may sustain in consequence of his building or land being so acquired and for any expense incurred by such owner in consequence of the order made by the Commissioner :

Provided that__

(i) any increase or decrease in the value of the remainder of the property of which the building or land so acquired formed part likely to accrue from the set-back to the regular line of the street shall be taken into consideration and allowed for in determining the amount of such compensation;

(ii) if any such increase in value exceeds the amount of loss sustained or expenses incurred by the said owner, the Commissioner may recover from such owner half the amount of such excess as a betterment charge."

Section 389, which falls under Chapter XXIV, deals with 'compensation'. Section 389(1) envisages minimum damage in certain cases and for such damage, compensation is to be assessed in the manner prescribed by or under the Act and it is to be paid over to the person who sustained such damage. Clause (f) of Section 389(1) refers to acquiring any building or land required for any public street under Section 216 of the Act. Section 390 of the Act empowers the Commissioner to determine compensation. Thus, the combined reading of Sections 213, 216, Section 389(1)(f) and Section 390 makes it clear that the land owners whose lands are acquired under the BPMC Act are entitled to compensation which is to be assessed in accordance with the provisions laid down in the said Act. Since Section 216 refers to "any loss' which the owner may sustain in consequence of his building or land being acquired, it also includes solatium as contemplated under Section 23(2) of the Land Acquisition Act.

11. It was further contended by the learned advocate for the petitioners that Section 284-N of Chapter XVI deals with 'land acquisition'. Section 284-N reads as under :

"284N. Extent to which Land Acquisition Act shall apply to acquisition of land otherwise than by agreement.

The Land Acquisition Act, 1894 (in this and the next succeeding sections referred to as 'the Land Acquisition Act') shall to the extent set forth in Appendix I regulate and apply to the acquisition of land under this Chapter, otherwise than by agreement, and shall for that purpose be deemed to form part of this Chapter in the same manner as if enacted in the body hereof, subject to the provisions of this Chapter and to the provisions following, namely :-....."

The above provision makes it clear that the Land Acquisition Act applies to this Chapter, i.e. Chapter XVI only to the extent set forth in Appendix I to the BPMC Act. Appendix I lays down provisions of the Land Acquisition Act, 1894, regulating the acquisition of land

for improvement purposes under the BPMC Act, which reads as under;

Part-I- Preliminary, except clauses (e) and (f) of Section 3.

Part-II.Acquisition, except sub-section (1) of Section 4, section 6 and sub-section (2) of Section 17.

Part-III-Reference to Court and Procedure thereon, except sub-section (2) of section 23 and clauses (6) and (7) of section 24.

Part-IV-Apportionment of compensation.

Part V- Payment.

Part VI-Temporary occupation of land.

PartVII-Miscellaneous."

While reading Part-III of Appendix-I, it is obvious that the Land Acquisition Act applies to reference to Court and procedure thereon, except sub-section (2) of Section 23 and clauses (6) and (7) of Section 24. Sub-section (2) of Section 23 deals with solatium. Thus, an exception is carved out whereby the provisions of sub-section (2) of Section 23 of the Land Acquisition Act would not apply to the acquisition of land for improvement purposes under Section 284N of the Act, which falls under Chapter XVI. On the basis of provisions of Section 284N, read with Part III of Appendix I to the BPMC Act, the learned Advocate for the petitioners has submitted before us that since no exception is made with regard to Chapter XIV of the Act which deals with streets and acquisition of open land or of land occupied by platforms etc., within regular line of the street is made under Section 213 of the Act, the solatium has to be granted by the respondent-Corporation.

12. While making above submissions, the learned counsel for the petitioners has relied on the old decision of Bombay High Court in the case of Borough Municipality of Ahmedabad. Vs. Jayendra Vajubhai Divatia, reported in AIR 1937 Bombay 432, wherein it is held that Sections 23, 24 and 25 of the Land Acquisition Act, constitute the code laying down the principles on which the District Court is to act in arriving at the compensation to be paid and it is impossible to leave out of that Code sub-section (2) of Section 23 of that Act.

These sections determine the basis on which the value of the land is to be ascertained on compulsory purchase and allowance of the fifteen per cent must be set off against matters disallowed under S. 24. It was further held that these sections apply to proceedings in the District Court under Section 198 of Bombay Municipal Boroughs Act. The District Judge is entitled to allow the 15% under Section 28 of the Land Acquisition Act, in addition to the amount of compensation awarded under Section 198 of the Act for compulsory purchase.

13. It is to be noted here that the above decision was rendered in the context of claim for compensation made under the provisions of Bombay Municipal Boroughs Act. Sub-section (3)(c) of the said provides that compensation, the amount of which shall in case of dispute be ascertained herein in the manner provided in Section 198, shall be paid by the Municipality to the owner of any land added to a street under clause (b) of sub-section (3) for the value of the said land. So that, what is to be paid for the compensation for the value of the land compulsorily taken. Section 198 of the said Act provides for the method of assessing compensation. If the amount is not agreed, the parties have to appoint Arbitrators, who are selected as Sirpanch and in the event of the Panchayat not arriving at a decision, then the matter shall, on application by either party, be determined by the District Court, which shall, in cases in which the compensation is claimed in respect of land, follow as far as may the procedure provided by the Land Acquisition Act, 1894, for proceedings in matters referred for the determination of the Court. Since no such provision similar to that in Section 198(3) of the said Act is incorporated in the BPMC Act, the said judgment, in our considered opinion, does not render any assistance to the petitioners. The learned advocate for the petitioners has further relied on the decision of the Bombay High Court in the case of D.S. Rege Vs. The Municipal Corporation of Greater Bombay and another, reported in AIR 1979 Bombay 311, wherein sub-sections (2) and (3) of Sections 298, 299 and sub-sections (1) and (2) of Section 301 of Bombay Municipal Corporation Act (3 of 1888) were declared as violative of Articles 14 of the Constitution of India and void. It was observed in the said decision that the owner whose land is acquired under the provisions of Sections 297 to 301 is prejudiced as compared to what would have happened had the land been acquired under the provisions of Section 296. The objective of both sets of provisions is to acquire lands for a public street. Both sets of provisions can be applied when the object is to widen a public street. There is no good reason why the Commissioner cannot

validly resort to the provisions of Section 296 when a public street is required to be widened from end to end. There are no guidelines as to when one set of provisions must be implemented and when the other. It is further observed by the Court that there is no difference between the owners whose lands are to be acquired under the provisions of Sections 297 to 301 for prescription of regular line of the street and the owners whose lands are to be acquired under Sec. 296 for widening or extending a public street. There being no such difference, it cannot be held to bear a reasonable relation to the object to be achieved. The Court has therefore taken the view that there is no classification founded on an intelligible differentia which distinguishes the owners of lands left out by the provisions of Sections 297 to 301.

14. In our view, the Bombay High Court has taken the view that both the sets of provisions fall under the same type and an artificial distinction was made out which is not approved by the Court. The question posed before us is to be viewed with the provisions contained in the BPMC Act and since two Acts are different, and more so subsequent judgments, dealing with the similar issue under the BPMC Act, having been considered by us, the petitioners are not justified to derive any support from the said judgment.

15. Learned Advocate for the petitioners has further drawn our attention to the specific observation made in the decision of the Hon'ble Supreme Court in the case of Municipal Corporation of the City of Ahmedabad and Others Vs. State of Gujarat and Another, reported in AIR 1972 S.C. 1730. In the end of Para 14 of the said judgment, it is observed, that the owner has to be compensated for every deprivation or loss and, therefore, prima facie it must be held that the Corporations Act provides for the payment of compensation for the property acquired. On the basis of this observation, the learned Advocate for the petitioners has pleaded before us that every deprivation or loss includes the amount of solatium and it has to be granted to the petitioners. While upholding the constitutional validity of Section 212 of the BPMC Act, the Hon'ble Supreme Court has held in the said decision that the two Sections, namely Section 216(1) and Section 389(1) if read together make it clear that full indemnification in terms of money for the loss caused is to be made to the owner of the property or other interests affected by reason of the exercise of power under Section 212. Since every kind of loss is required to be compensated as a consequence of the order passed by

the Commissioner under Section 216 of the Act, the question whether the Act need have provided for compensation as on the acquisition of the building or a part of the building which is pulled down under Section 212, does not survive. The Court has further observed that since full indemnification in accordance with judicial norms is the goal set by the Act, it is implicit in such a provision that the rules for determination of compensation shall be appropriate to the property acquired and such as will achieve the goal on full indemnity against loss. In other words, the Act provides for compensation to be determined in accordance with judicial principles by the employment of appropriate methods of valuation so that the person who is deprived of property is fully indemnified against all loss. This by itself, is a specification of a principle for the determination of compensation. The Court has further observed about the manner of determination of compensation as provided in Section 390 of the Corporations Act. Under the said Section, the Commissioner of such other officer as may be authorised by him shall hold such enquiry as he thinks fit and determine the amount of compensation to be paid. Either the Commissioner or an Officer authorised by him has to hold an appropriate enquiry before determining the amount of compensation. Since the Act provides for an appeal and second appeal against such determination, it is clear that the enquiry must be made on broad judicial guidelines. Any arbitrary determination is bound to be set aside in appeal. Since no limitations are placed on the powers of the Appellate Judges in determining the loss in a just and appropriate manner, it is expected that the Commissioner or his authorised officer, who holds the enquiry in the first instance, will be guided by the principles which meet with the approval of the Appellate authorities. Thus, the manner of the determination of compensation is also specified by the Act. Thus, in our considered opinion, the above Judgment does not, in any way, deal with the claim regarding the solatium, and it is not even the issue before the Court. It is, therefore, difficult for us to accept that the words "every deprivation or loss" also include "solatium". We are, therefore, of the view that this decision would not bring the petitioners' case any further so as to enable them to claim solatium.

16. Our attention is drawn to the decision of the Hon'ble Supreme Court in the case of Union of India Vs. Ram Mehar and Others, reported in AIR 1973 SC 305. This decision is rendered in the context of Land Acquisition (Amendment and Validation) Act (1967). While drawing the

distinction between the 'compensation' and 'market value' with reference to the amount to be awarded for acquisition of the land, the Court has expressed the view that the additional amount of 15% certainly forms part of the amount of compensation because under Section 23, the compensation is to consist of what is provided in sub-section (1) and the additional amount of 15% on the market value of the land acquired but the compensation and market value are distinct expressions and have been used as such in the Acquisition Act. It is not possible for any one to contend that solatium falls within the expression "land" within the meaning of Section 3(a) of the principal Act. Since under Section 4(3) of the Amending Act it is only the market value of the land on which interest has to be paid, solatium cannot form part of the market value of the land.

17. Our attention is further drawn to the decision of the Hon'ble Supreme Court, in the case of Municipal Corporation of Greater Bombay and Others Vs. Central Bank of India and Another, reported in AIR 1994 SC 2385. In this case, the issue before the Court was that does the provision in sub-section (1) of Section 301 of the BPMC Act specifies a principle of determination of compensation payable to the owners of the buildings or lands acquired for a public street under Section 298 and 299 thereof and that does the principles specified in sub-section (1) of Section 301 of the BPMC Act, for determination of compensation payable to the owners or buildings or lands acquired under Section 298 and 299 thereof warrant determination of such compensation according to the market value of such acquired buildings or land and that what method could be adopted for determining the amount of compensation payable under sub-section (1) of Section 301 of the BPMC Act. Keeping these issues in mind, the Court has held that principles specified in sub-sec.(1) of Section 301 of the BPMC Act for determination of compensation payable to the owners for their lands or buildings acquired under either of the Section 298 or 299 thereof, does not warrant determination of compensation according to market value of such building or land. What is to be done by way of compensation for a land acquired under a statute is what is required to be paid thereunder, by way of compensation for the acquired land and not payment of some thing by way of compensation which is not envisaged under the Statute. It is further held that the method which is the most appropriate for adoption in determining the compensation payable under sub-section (1) of Section 301 of the BPMC Act to the owner for his acquired property, having regard to the determinants or indicia specified in

that sub-section is that which should necessarily involve the following exercise :

(1) Of determining the market value of the whole property or land of the owner before a portion of that property or land was acquired under either Section 298 or Section 299 of the BMC Act.

(2) Of determining the market value of the remainder property left with the owner after a portion of it got acquired under either Section 298 or Section 299 of the BMC Act. That market value of the remainder property must be that determined taking into consideration the increased value accrued to it or decreased value suffered by it, as a result of improved street formed by acquisition of its portion and acquisition of similar portions of properties of others. Whenever the remainder property gets the benefit of improved street formed with acquired portions of lands, it can be presumed in the absence of contrary evidence that there is increase in its value, although the quantum of increase ought to depend on extents or strips of lands acquired for the improvement of the street and importance gained by it.

(3) If the amount of the market value of the property, as determined under item (2) falls short of the amount of market value of the property as determined in item (1), it is that amount of the short-fall, which could be regarded as the loss to the owner for his acquired portion of the property, the principal component of compensation payable under sub-section (1) of Section 301 of the BMC Act to the owner for his acquired portion of property or land.

(4) Expenses incurred by the owner, if any, on account of acquisition of a portion of his property if not already taken into consideration in determining the market value of the remainder property under item (2), then that amount of expenses incurred by the owner should be regarded as the other component compensation payable to him under sub-section (1), Section 301 of the BMC Act.

(5) The amount of loss in item (3) and the amount of expense in item (4) together constitute the total

compensation payable under sub-section (1) of Section 301 of the BMC Act to the owner for his acquired property or land."

18. While dealing with the petitioners' challenge to the impugned provisions of the BPMC Act on the ground of non-availability of more beneficial provisions of Land Acquisition Act to the land owners whose land is acquired under the BPMC Act, we refer to the decision of the Hon'ble Supreme Court, reported in the case of Prakash Amichand Shah Vs. State of Gujarat and Others reported in (1986) 1 SCC 581, wherein the challenge to the constitutional validity of the Town Planning Scheme No. VIII in respect of certain lands situated at Surat City was made, alleging inter alia that it was violative of Articles 14, 19(1)(f) and 31 of the Constitution of India. In this context, the Court has held that acquisition of land under the Town Planning Scheme under Section 53 of the Bombay Act cannot be said to be violative of Articles 14 of the Constitution on the ground of deprivation of a more favourable procedure under the Land Acquisition Act from the point of view of the quantum of compensation payable for the land which includes solatium payable under Section 23(2) thereof. The Act is not bad for not explaining the procedure of the Land Acquisition Act, 1894 to the proceedings under the Town Planning Scheme. The Court has further held that there are two separate provisions, one for acquisition of land by the State Government under the Land Acquisition Act and the other for acquisition for the purpose of town planning by the local authority under the Bombay Town Planning Act. There is no option to the local authority to resort to one or the other of the alternative methods which results in acquisition. The object of the Act is not just acquiring a bit of the land here or a bit of the land there for some public purpose. It consists of several activities which have as their ultimate object the orderly development of an urban area. On the final Town Planning Scheme coming into force under Section 53 there is an automatic vesting of all lands required by the local authority, unless otherwise provided, in the local authority. The Court has further observed that it is also not possible to hold that the Act to be discriminatory merely on the ground of denial of solatium of 15% of the market value of the land in addition to the compensation payable for lands taken by the local authority for purpose of the scheme. The proceedings relating to the scheme are not like acquisition proceedings under the Land Acquisition Act nor are the provisions of the Land Acquisition Act made applicable either without or with modifications. It

cannot also be said as a rule that the State which has got to supply and maintain large public services at great cost should always pay in addition to a reasonable compensation some amount by way of solatium. The interest of the public is equally important. This decision makes it amply clear that if there is no provision with regard to grant of solatium in addition to the compensation, the relevant provisions dealing with the compensation, cannot be held as ultra vires the Constitution on the ground of the same being discriminatory and violative of Articles 14 of the Constitution.

19. Our attention is further drawn to the decision of the Hon'ble Supreme Court in the case of State of T.N. and Others Vs. Ananthi Ammal and Others, reported in (1995) 1 SCC 519, wherein the challenge to the validity of the provisions of T.N. Act on the ground of it being discriminatory and violative of Article 14 of the Constitution of India on a comparison thereof with the provisions of the Land Acquisition Act is held to be not sustainable. The sources of authority for the two being different, Article 14 can have no application. When a statute is impugned under Article 14 what the court has to decide is whether the statute is so arbitrary or unreasonable that it must be struck down. At best, a statute upon a similar subject which derives its authority from another source can be referred to, if its provisions have been held to be reasonable or have stood the test of time, only for the purpose of indicating what may be said to be reasonable in the context. The ratio laid down in the decision of Prakash Amichand Shah (Supra) was reiterated by the Hon'ble Supreme Court in this decision also by holding that no solatium is payable under the Slum Clearance Act which does not make any substantial difference. It cannot be said that the State, which has got to supply and maintain large public services at great cost should always pay in addition to a reasonable compensation for acquired land, some amount by way of solatium, the interest of the public was equally important. It is, therefore, not unreasonable to state that the Corporation should not have to pay solatium in consideration of the compulsory nature of acquisition of land for street. Lastly, if we appreciate the arguments of the learned advocate for the petitioners to the effect that exclusion of Section 23(2) of the Land Acquisition Act as provided in Part III of Appendix-I to the BPMC Act is there so far as the acquisition under Section 213 is concerned, by necessary implication the provisions of Section 23(2) of the Land Acquisition Act applies and hence the solatium has to be granted to the petitioner,

we may refer to the decision of the Hon'ble Supreme court in the case of Union of India & Others Vs. Dhanwanti Devi and Others, reported in 1996 (6) SCC 44, wherein the issue before the Court was that where the respondents are entitled to solatium and interest under the Jammu and Kashmir Requisitioning and Acquisition of Immovable Property Act, 1968 (15 of 1968), the question, therefore, before the Court was whether the Jammu & Kashmir Act expresses any intention to exclude payment of interest and solatium in respect of the property acquired thereunder. Land Acquisition Act, 1894 provides for payment of interest under Section 34 by the Land Acquisition Officer and by the Court under Section 28. Similarly, Section 23(2) provides for payment of solatium, in addition to compensation, in consideration of compulsory acquisition. The Jammu & Kashmir legislature was aware of the above provisions and principles of determination of the compensation under the Acquisition Act. Yet, the Legislature departed from those principles; instead, it sets down under the Act its own principles to determine the compensation. The Jammu and Kashmir Act did not expressly provides for payment of interest and solatium as components of compensation under the Act. The Court has further held that the requisitioning and acquisition of Immovable Property Act, 1952, which being the Central Act, does not provide for payment of solatium and interest. The Jammu & Kashmir Act was passed in the year 1968, while the Central Act of 1952 was passed in 1952. It would, therefore, be reasonable to conclude that the State Legislature was cognizant of the expressed provisions for payment of interest and solatium available in the Land Acquisition Act. The Jammu & Kashmir Act omitted the similar provisions for payment of interest and solatium as part or component of compensation, obviously to fall in line with the Central Act of 1952. The Court has further found that sub-section (2) of Section 23 of the Land Acquisition Act expressly states that solatium is "in addition" to the compensation as consideration for compulsory nature of acquisition. The Jammu & Kashmir Act omitted to pay solatium and interest, in addition to compensation. The omission by the Legislature is deliberate, therefore the owners were not entitled to solatium and interest under the Jammu & Kashmir Act of 1968. The Court, while explaining the concept of unjust enrichment, has taken the view that denial of solatium and interest in respect of property acquired under the Act could not be an unjust enrichment of the State. The Court has observed :

"The public money is credited to the Consolidated Fund of India which is expended in accordance with the Appropriation Bill passed by Parliament or the State Legislature in accordance with the provisions of the Constitution. The amount collected would be expended for the purposes of appropriation and for implementation of the Directive Principles of State policy and the law made by the appropriate legislature or the executive policy in furtherance thereof. Therefore, the non-payment of solatium and interest does not independently get into the coffers of the public exchequer nor does the State enrich itself. The public money is expended only for public purpose. The concept of unjust enrichment by the State is alien to and in derogation of the constitutional scheme and public policy. The general principle is that one should not be permitted to unjustly enrich himself at the expense of others. Unjust enrichment of a person occurs when he has and retains money or benefits which in justice and equity belongs to another. Three elements must be established in order to sustain a claim based on unjust enrichment, the benefit conferred upon the defendant by the plaintiff; appreciation of knowledge by the defendant of the benefit; and the acceptance or retention by the defendant of the benefit under such circumstances as to make it inequitable for the defendant to retain the benefit without payment of its value. These principles specifically absent in the case of omission by a stature, are made by the competent legislature to award interest or solatium, in addition to compensation. So, it cannot be characterised as unjust enrichment where such action does not involve violation of law or is not opposed to public policy either directly or indirectly when the statute prescribed the principle for payment of compensation and omits as its policy to provide for the payment of interest and solatium as components of compensation. It is the legislative public policy to provide for acquisition of the private property for a public purpose. The State pays compensation for the acquired land in accordance with the principle laid down in the stature. It would, therefore, be illogical to contend that by legislative omission to pay solatium and interest the State enriches itself unjustly at the expense of the private person."

20. Keeping in view these principles in mind, it cannot be said that mere omission would make the petitioners to be entitled to claim solatium. The learned Assistant Government Pleader, appearing for the State, has drawn our attention to the decisions of Hon'ble Supreme Court, in the case of Union of India Vs. Harikishan Kosla - JT 1992 (5) SC 579; JT 1996 (5) SC 402; and in the case of Union of India Vs. Ajaib Singh & Others - JT 1996 (6) SC Page 73. The Hon'ble Supreme Court has held in the case of Union of India Vs. Harikishan Kosla (Supra) that the claimants are not entitled to solatium and interest since the Act does not provide for the payments thereof. Same question was involved in the case of Union of India & Others Vs. Shersingh & Anr., wherein the Court has taken the view that determination of just compensation is with reference to the value of the land acquired under the Act. Since the payment of solatium and interest in addition to compensation determined under the Act is not provided, the High Court was not right in upholding payment of solatium and interest. The said principle has been reiterated in the case of Union of India Vs. Ajaib Singh & Others, (Supra).

21. Having regard to the facts and circumstances of the case and having regard to the principles enunciated by the Hon'ble Supreme Court in its various judgments from time to time, and further having regard to the provisions contained in the Act, we are of the view that the petitioners are not entitled to solatium and that the provisions contained in Part III of Appendix-I to the BPMC Act, are not unconstitutional and ultra vires and they are not violative of Article 14 of the Constitution of India. The petition, therefore, fails. Rule is discharged with no order as to costs.

22. So far as Special Civil Application Nos. 3224 of 1987 and 1844 of 1987, which are filed against the order and judgment of the learned Assistant Judge, Surat, are concerned, we hold, on the basis of our conclusions drawn in Special Civil Application No. 3623 of 1983, that the provisions contained in Part III of Appendix-I to the BPMC Act are not unconstitutional and ultra vires and that the petitioners are not entitled to solatium at the rate of 30% p.a. on the amount of compensation. So far as Special Civil Application No. 1844 of 1987 is concerned, the same is filed by the Surat Municipal Corporation challenging the amount of compensation as determined by the learned Civil Judge (SD), Surat, and as confirmed by the learned Assistant Judge, Surat, except

the amount of solatium at the rate of 30 per cent. However, we are not inclined to interfere in the impugned orders and hence both the petition fail. Rule discharged with no order as to costs.

[D.M. Dharmadhikari, C.J.]

rmr. [K.A. Puj, J.]